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INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN

Written statement*/ submitted by the Center for Reproductive Law and Policy, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 January 2001]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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ENG

1. Reproductive rights are firmly grounded in some of the longest-recognized basic human rights principles. These rights constitute a broad concept that recognizes a woman's right to access information and services to enable choices, as well as the inextricable link between her reproductive life and gender equity, equality, and empowerment. Reproductive rights encompass two basic principles: the right to reproductive health and the right to reproductive self-determination. The right to reproductive health translates into a governmental duty to ensure availability of quality reproductive health services and removal of legal barriers to reproductive health care. The right to reproductive self-determination has support in the right to plan one's family, the right to be free from interference in reproductive decision-making, and the right to be free from all forms of violence and coercion that affect women's sexual or reproductive lives. Both these principles are reflected in international human rights instruments that protect life and health such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

2. Two recent international conferences marked a turning point in the recognition and promotion of reproductive rights. In 1994 at the International Conference on Population and Development (ICPD) in Cairo, the international community embraced the concept of reproductive rights and health as never before. The ICPD Programme of Action is unprecedented in its broad understanding of the concept of reproductive rights and reproductive health[1] and it signaled a paradigm shift away from the mere provision of family planning towards a broad spectrum of reproductive health services and an increased acceptance of the right to reproductive self-determination. Building on the momentum of the ICPD, the 1995 Beijing Platform for Action reaffirmed the principles agreed to at the ICPD, but went even further by recognizing a woman's right to control her sexuality and sexual relations and to decide upon these matters on an equal basis with men.[2]

3. Recent efforts to assess the progress in implementing both the ICPD Programme of Action and the Beijing Platform for Action have produced two review documents[3] which reaffirm the principles originally agreed to at these conferences and serve to renew governments' commitment to advance reproductive health and rights. Both documents also note that there is much progress to be made in the full recognition of reproductive rights and in removing barriers to the enjoyment of those rights.

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[1] Programme of Action of the International Conference on Population and Development, Cairo, Egypt, 5-13 September 1994, in REPORT OF THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT, U.N. Doc. A/CONF.171/13/Rev.1, U.N. Sales No. 95.XIII.18 (1995), paras 7.2, 7.3.

[2] Beijing Declaration and Platform for Action, Fourth World Conference on Women, Beijing, China, 4-15 Sept. 1995, para 96.

[3] *Key Actions for the further implementation of the Programme of Action of the International Conference on Population and Development*, report of the Ad Hoc committee of the Whole of the Twenty-first Special Session of the General Assembly, New York, 1 July 1999, UN Doc A/S-21/5/Add.1; *Further actions and initiatives to implement the Beijing Declaration and the Platform for Action* (Annex, Draft Resolution II), Report of the Ad Hoc Committee of the Whole of the twenty-third special session of the General Assembly, New York, 5-9 June 2000, UN Doc A/S-23/10Rev.1.

4. While the placement of reproductive rights within the international human rights framework is critical in the promotion and protection of these rights, it is also important to emphasize the crucial link between this framework and the enforcement of reproductive rights at the national level. This Commission has already recognized the role that national institutions play in the promotion and protection of human rights,[4] with a particular reference to the Beijing Platform for Action's call to create or strengthen national institutions for the protection of women's human rights.[5] It should be further emphasized that while formal laws and policies are crucial indicators of governmental commitment to promoting women's reproductive rights, their effectiveness depends on implementation and enforcement.

5. Since the Cairo and Beijing conferences, many governments have put reproductive rights on their national agenda, leading to significant legal and policy developments. In particular, in the last five years women's access to family planning and contraception has been expanded, national abortion laws have been liberalized, and measures have been taken to prevent and punish various forms of violence affecting women's reproductive health and rights.

Family Planning and Contraception

6. An estimated 350 million couples worldwide do not have access to the family planning services they need[6] and in many countries access to contraception is inhibited by laws, policies, or government inattention to women's reproductive health. A woman's right to access family planning and contraceptive methods and therefore to decide on the number and spacing of her children is based on the fundamental principle of reproductive self-determiniation. The right to plan one's family further implies a governmental duty to ensure that women have equal access to contraceptives and reproductive health services. This right is violated not only when a woman's access to contraception is denied but also when methods of controlling her fertility are imposed upon her without her informed consent. In recent years there have been several important legal and policy developments affecting contraceptive access. For example in 1999, Japan, previously the sole member state of the United Nations to prohibit the use of oral contraceptives, approved their use.[7] Other positive advancements include a recent trend in many countries to approve the use of emergency contraception (EC).[8]

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[4] *See eg. National Institutions for the Promotion and Protection of Human Rights*, Commission on Human Rights Res. 1999/72, U.N. Doc. E/CN.4/RES/1999/72 (Apr. 29, 1999).

[5] *Id.*, at pmbl.

[6] Safe Motherhood Inter-Agency Group [includes United Nations Population Fund, United Nations Children's Fund, World Health Organization, World Bank Group, among others], *Unwanted Pregnancy* (visited April 17, 2000) http://www.safemotherhood.org/init_facts.htm.

[7] Evy F. McElmeel, *Legalization of the Birth Control Pill in Japan will Reduce Reliance on Abortion as the Primary Method of Birth Control*, 8 PAC. RIM L. & POL'Y J. 681, 681 (1999).

[8] CRLP, REPRODUCTIVE RIGHTS 2000: MOVING FORWARD 23 (2000).

7. While these and other advances are certainly welcomed, CRLP acknowledges that many obstacles remain to ensuring women's right to reproductive self-determination, and the right to plan pregnancy in particular. CRLP recommends that governments eliminate restrictions on access to family planning and contraception, including excessive regulation and prohibitions on the dissemination of information regarding contraceptives.

Abortion

8. Every year, approximately 13% of maternal deaths worldwide are attributable to unsafe abortion.[9] Laws that deny women access to safe abortion are therefore not only a violation of a woman's rights to health, to autonomy in reproductive decision-making, and to non-discrimination, but also of her right to life. While roughly 39% of the world's population live in countries where abortion is either illegal or severely restricted,[10] there have been some positive developments toward the liberalization of abortion laws worldwide. For example, in 1996, Burkina Faso liberalized its Penal Code to permit abortion at any stage of pregnancy when a woman's life or health is endangered and in the case of severe fetal impairment.[11] Under the previous law, abortion was prohibited unless performed to save a woman's life.[12]

9. CRLP welcomes this and other recent liberalizations and recommends that governments further institute legal and policy reforms aimed at increasing access to safe and legal abortion services and continue to remove existing legal and other barriers.

Violence Against Women and Reproductive Rights

10. The right to be free from all forms of violence and coercion implies that women should be able to make decisions about reproduction free of violence and discrimination. Violence is often directed specifically at women's sexual or reproductive capacity and it may manifest itself in many forms including sexual violence such as rape and sexual exploitation/trafficking, as well as harmful traditional practices such as female circumcision/female genital mutilation (FC/FGM).

Sexual Violence

11. This Commission, as well as the international community more broadly, has widely accepted women's right to be free of gender based violence, including rape and other sexual violence.[13] As recognized by the Special Rapporteur on Violence Against

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[9] DIV. OF REPRODUCTIVE HEALTH, WHO, UNSAFE ABORTION 9 (3c ed. 1998).

[10] CRLP, REPRODUCTIVE RIGHTS 2000: MOVING FORWARD 27 (2000).

[11] Abortion is also permitted during the first 10 weeks of pregnancy in cases of rape or incest. Burkina Faso, Law No. 043/96/ADP amending the Penal Code, arts 383, 387 (1996).

[12] Burkina Faso, Penal Code, arts 317, 328 (1984) (superseded).

[13] *See eg. Elimination of Violence Against Women*, Commission on Human Rights Res. 2000/45, U.N. Doc. E/CN.4/RES/2000/45 (Apr. 20, 2000); *Declaration on the Elimination of Violence Against Women*, G.A.

Women, sexual violence in its various forms violates women's reproductive rights, including their rights to: health, bodily integrity and to control their sexuality and reproductive capacity.[14]

12. There have been several recent efforts on the part of governments to prevent and punish sexual violence against women. In particular, the adoption and ratification of the Convention of Belém do Pará in 1994 prompted numerous Latin American countries to undertake reforms which include the passage of laws to protect women from domestic violence in fourteen Latin American countries since 1995.[15]

13. While recognizing these important advances, CRLP would like to draw the Commission's attention to forms of sexual violence that continue to perpetuate a culture of violence against women. These include the use of rape as a weapon of war, laws that condone sexual violence against women by permitting a rapist to avoid criminal liability and punishment by marrying the victim, and the practice of so-called honor killings.[16] Moreover, formal laws addressing violence against women are usually inadequately implemented and enforced.

Female Circumcision/Female Genital Mutilation (FC/FGM)

14. It is estimated that 130 million girls and women worldwide have undergone female circumcision/female genital mutilation (FC/FGM), and at least two million girls are at risk of undergoing the procedure each year.[17] FC/FGM, when performed upon girls and non-consenting women, is a form of violence that violates a number of recognized reproductive rights including: the right to non-discrimination, the rights to life and physical integrity, the right to health, and the right of the child to special protections. Since 1995, 12 countries in Africa or with African immigrant populations have joined others that had previously adopted measures criminalizing FC/FGM.[18] CRLP welcomes these advances and encourages governments to take a variety of legal, policy level and education-based approaches to combat the practice and bring about the necessary change in societal and individual thinking with regard to FC/FGM.

Conclusion

15. While the last six years since the Cairo and Beijing conferences have witnessed a broad movement to recognize women's reproductive health and choices as a fundamental human right, there is still much to be accomplished in the fulfillment of

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Res. 48/104, U.N. Doc. A/RES/48/104 (Feb. 23, 1994); Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, Convention of Belém Do Pará, 1994.

[14] Radhika Coomaraswamy, *Report of the Special Rapporteur on Violence against Women, its causes and consequences, Addendum: Policies and Practices that Impact Women's Reproductive Rights and Contribute to, Cause or Constitute Violence against Women*, E/CN.4/1997/68/Add.4 (Jan 21, 1999).

[15] CRLP, REPRODUCTIVE RIGHTS 2000: MOVING FORWARD 48 (2000).

[16] CRLP, REPRODUCTIVE RIGHTS 2000: MOVING FORWARD 47 (2000).

[17] NAHID TOUBIA, FEMALE GENITAL MUTILATION: A CALL FOR GLOBAL ACTION 5 (1995).

[18] CRLP, REPRODUCTIVE RIGHTS 2000: MOVING FORWARD 41 (2000).

governments' obligations. Governments' commitment to women's rights should be clearly reflected in legal and policy reforms, which not only affect behavior, but can shape people's understanding of equity and justice. These reforms, in turn, must be accompanied by rigorous national efforts at enforcement and implementation.